Supreme Court of the United States

OCTOBER TERM, 1956.

No. 276.

GENERAL ELECTRIC COMPANY,
PETITIONER,

v.

LOCAL 205, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE),
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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INDEX.

CITATIONS.

Cases:

Statutes and Authorities:

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Opinions Below

The opinion of the Court of Appeals (R. 31-58) is reported in 233 F.2d 85. The opinion of the District Court (R. 22-27) is reported in 129 F. Supp. 665.

Jurisdiction

The judgment of the Court of Appeals, remanding the case for further proceedings under the Arbitration Act, and directing the District Court to permit the parties to amend their pleadings to allege, respectively, compliance with the requisites of the Act and defenses afforded by it and to determine certain preliminary questions as to arbitrability, was entered on April 25, 1956 (R. 58). The jurisdiction of this Court is invoked under 28 USC Sec. 1254.

Questions Presented

Since the only controversy actually decided by the Court below relates to the Norris-LaGuardia Act, the only justiciable issue presented by this case relates to the applicability of that Act.

The question thus actually presented is whether the Norris-LaGuardia Act deprives a federal district court of jurisdiction to enforce an employer's obligation in a collective contract to submit to arbitration two grievances: one, that an employee was being paid at a lower rate of pay than that specified in his job classification; the other, that an employee had been discharged arbitrarily and not for cause.

The questions raised by the petitioner with respect to the Labor Management Relations Act and the Arbitration Act concern the law, as formulated by the Court below, to be applied by the District Court, upon remand, after the pleadings have been amended by the parties and after the District Court determines the question of whether the contract in suit puts matters of arbitrability to the arbitrator or leaves them for decision by the Court and other preliminary matters relating to arbitrability. Since the Court below has made these conditions prerequisites for the application

of the Arbitration Act by the District Court and neither the amendments nor the determination by the District Court has yet been made, no real question as to the Labor Management Relations Act of 1947 or the Arbitration Act can now be presented and petitioner's formulation of the question in these respects (Petitioner's Brief p. 2, Question 1) relates to a hypothetical case that may never arise, or a case that may arise in such a different form that the question presented is moot and abstract.

Statutes Involved

The pertinent provisions of the Norris-LaGuardia Act (47 Stat. 70, 29 USC Secs. 101-115) in addition to Secs. 1 and 7 set forth by the Petitioner in Appendix A to its Brief, are set forth in Appendix A hereto. The provisions of the Labor Management Relations Act of 1947 (61 Stat. 156, 29 U.S.C. Secs. 141-187) and of the United States Arbitration Act (61 Stat. 669, 9 U.S.C. Secs. 1-14 as amended), which petitioner claims, and respondent denies are pertinent to the consideration of this case by this Court, are set forth in Petitioner's Brief, Appendix A.

Statement

Petitioner is a New York corporation, having a plant at Ashland, Massachusetts which is, without dispute, in an industry affecting commerce.

Respondent is a voluntary unincorporated local labor union, with its principal place of business in Ashland, Massachusetts, all of whose members are citizens of states other than New York (Appendix B. hereto, Carr Affidavit p. 23). It has been certified by the National Labor Relations Board and is recognized by the petitioner as the representa-

tive for the purpose of collective bargaining of the employees at petitioner's Ashland plant.

The collective bargaining agreement between the parties, which was in full force and effect at all times relevant hereto, established a conventional four step procedure for the settlement of employee grievances and further provided that "any matter involving the application or interpretation of any provisions of this Agreement" with certain exceptions not here material, "may be submitted to arbitration by either the Union or the Company," by written notice given after the decision in the fourth step of the grievance procedure (R. 13-15, Agreement Exhibit A, Arts. XII, XIII, R. 8).

On April 2, 1954, the Union duly filed a written grievance that employee Boiardi was being employed at a job classification which carried a higher rate of pay than he was in fact receiving (R. 15), and on August 13, 1954 a second grievance that employee Armstrong had been discharged arbitrarily and not for cause. (R. 17) After unsuccessfully prosecuting these grievances through the fourth step of the grievance procedure, the Union duly notified the company in each instance of its desire to arbitrate, but the company refused to submit to arbitration either the grievance or the question of its arbitrability (R. 16, 17).

The union then filed its complaint in the District Court, alleging in its amended complaint that the action arose under Sections 301(a)-(c) of the Labor Management Relations Act of 1947 and praying that the company be required specifically to perform its agreement to arbitrate these grievances, in accordance with the contract and for damages (R. 13-18). The Company moved to strike that portion of the prayer for relief asking that it be compelled to arbitrate these grievances on the ground that the Court had no jurisdiction to grant the remedy of specific performance (R. 18-19). The District Court granted the mo-

tion for want of jurisdiction (R. 27-28) and on the sole ground that "the plain language of Norris-LaGuardia forbids the issuance of an injunction" (R. 25, 33. Petition p. 4). The Union then amended its complaint to eliminate any prayer for damages, so that no question could be raised as to the appealability of the decision (R. 28, 33) and, for the purpose of asserting diversity jurisdiction, added allegations that the matter in controversy exceeds the sum of three thousand dollars exclusive of interests and costs, that it had no adequate remedy at law, and that it would be subject to irreparable injury unless granted the relief requested. As thus amended, the amended complaint requested only specific performance of the agreement to arbitrate and such other and further relief as the Court deems proper (R. 28). This motion was allowed, and the District Court, expressly in accordance with its earlier ruling that it lacked jurisdiction because of the Norris-LaGuardia Act, entered final judgment dismissing the action for want of jurisdiction (R. 29).

On January 31, 1956, while the case was on appeal, and after the decision of this Court in *Bernhardt* v. *Polygraphic Co.*, 350 U.S. 198 (Jan. 16, 1956), respondent filed a motion under 28 U.S.C. Sec. 1653, with supporting affidavit, to allege that all the employee members of or employees represented by the Union are citizens of states other than the state of New York, where petitioner is incorporated, and that the Court had additional jurisdiction by virtue of Title 28 U.S.C. Sec. 1332(a)(1). (Appendix B hereto) The affidavit was uncontroverted.

On appeal the Court below vacated the judgment of the District Court and remanded the case (R. 58). It held that "jurisdiction to compel arbitration is not withdrawn by the Norris-LaGuardia Act" (R. 35) and that "an order to compel arbitration is neither barred specifically by Sec. 4 nor subject to the requirements of Sec. 7 (of the Norris-

LaGuardia Act)". (R. 40) As an apt summary of its analysis the Court quoted from *Textile Workers Union* v. *American Thread Co.*, 113 F. Supp. 137, 142 (D. Mass. 1953) "The general structure, detailed provisions, declared purposes and legislative history of that statute (Norris-LaGuardia Act) show it has no application to cases where a mandatory injunction is sought to enforce a contract obligation to submit a controversy to arbitration under an agreement voluntarily made" (R. 40).

Having thus decided, contrary to the District Court, the only matter upon which the District Court based its final judgment, namely that the Norris-LaGuardia Act does not negative the existence of jurisdiction, the Court below proceeded to a discussion of the affirmative basis upon which respondent might prevail "in the end" (R. 42), upon remand.

As prerequisites, it set forth three conditions: the parties should amend their pleadings to allege respectively compliance with the requisites of the Arbitration Act and defenses afforded by it; the District Court should decide as a matter of the general law of contract interpretation whether the contract in suit puts matters of arbitrability to the arbitrator or leaves them to decision by the Court; and if the former, the District Court should decide whether the matter is arbitrable, but if the latter, whether the claim of arbitrability is frivolous or patently baseless. Once these conditions have been met, the Court below held that the District Court could give the relief requested, under Sections 3 and 4 of the Arbitration Act, if the decision as to arbitrability on remand was for the Court, or subject to Sections 10 and 11 of that Act, if the decision as to arbitrability on remand was for the arbitrator (R. 56-57) and assuming, in each case, the respective decisions favoring arbitrability.

In its discussion of the applicable law, the Court limited

itself to a discussion of the case as a "Sec. 301 case" (R. 42-43) in which jurisdiction is based, not on diversity of citizenship but on federal question jurisdiction under Article III of the Constitution. In such a case, it held the availability of specific performance is a matter not of right but of remedy and governed by the law of the forum (R. 43); the special demands of diversity jurisdiction in *Erie R.R. Co.* v. *Tompkins*, 304 U.S. 64 (1938), *Guaranty Trust Co.* v. *York*, 326 U.S. 69 (1945) and *Bernhardt* v. *Polygraphic Co.*, 350 U.S. 198 (1956) do not require the application of state law governing the forms and mode of enforcing an arbitration agreement (R. 44); a statutory basis is required to give effect to arbitration agreements, and although Sec. 301 does not provide a sufficiently firm such basis, (R. 46-48), the Arbitration Act does. (R. 48) It further held that the arbitration clause here in suit is within the meaning of Sec. 2 of that Act as a "contract evidencing a transaction involving commerce" and not excluded from the operation of the Act by Sec. 1 thereof as a "contract of employment" of "workers engaged in foreign or interstate commerce" and that "the test of Sec. 4" of that Act, making specific enforcement available as a remedy, "will be satisfied by a complaint which meets the terms of Sec. 301 itself" (R. 56). Accordingly, it vacated the judgment of the District Court and remanded the case for further proceedings, including the amendment of the pleadings by the parties and decisions on arbitrability by the District Court. It also denied the respondent's motion to amend the complaint to show diversity jurisdiction on the ground that it may have become moot and in any event because, under Rule 17(b) F.R.C.P., it could not accomplish the result intended (R. 58).

Argument

It is clear that the only controversy actually decided by the Court below was that the Norris-LaGuardia Act did not negative the existence of jurisdiction in the District Court to compel the enforcement of the petitioner's obligation to submit the Boiardi and Armstrong grievances to arbitration in accordance with the terms of the collective bargaining agreement, and that the District Court erred in holding to the contrary. This was the only issue decided by the District Court, and, in the light of the conditions of the remand by the Court below, the only case or controversy on which the judicial power is capable of acting in the present posture of the case. *Osborne* v. *Bank of United States*, 9 Wheat 738, 819 6 L.ed. 204; *Smith* v. *Adams*, 130 U.S. 167, 173-174.

This decision with respect to the non-applicability of the Norris-LaGuardia Act does not warrant review by this Court.

I. There Is No Conflict of Decision with Respect to the Norris-LaGuardia Act.

There is no conflict of decision among the courts of appeal on this issue and petitioner has neither asserted any nor cited any conflicting decision by any court of appeals. On the contrary, the decisions of the Courts of Appeals for the Third, Fifth and Sixth Circuits are in accord with the decision on this issue of the Court below. *Independent Petroleum Workers* v. *Esso Standard Oil Co.*, CA 3d, decided June 26, 1956; *Lincoln Mills of Ala.* v. *Textile Workers Union*, C.A. 5th, 230 F.2d 81, 84, and 84-5 ftn. 6 (1956); *Milk and Ice Cream Drivers* v. *Gillespie Milk Products Corp.*, C.A. 6th 203 F.2d 650 (1953). The decisions of the Court of Appeals for the Fourth Circuit in *Amazon Cotton*

Mill Co. v. *Textile Workers Union*, 167 F.2d 183 (1948), the Ninth Circuit in *California Ass'n. of Employers* v. *Building and Construction Trades Council*, 178 F.2d 175 (1949) and the Tenth Circuit in *Lee Way Motor Freight Inc.* v. *Keystone Freight Lines Inc.*, 126 F.2d 931 (1942) are cited by petitioner not as decisions in conflict with the decision of the Court below, but only on the question of the requirements of Sec. 7 of the Act, and, in any event, they do not disclose any conflict. The *Amazon* case held that the Labor Management Relations Act of 1947 did not give the District Court jurisdiction over a complaint charging unfair labor practices and seeking an injunction to compel bargaining and an award of damages. The *California Ass'n.* case held to the same effect that the District Court lacked jurisdiction over a complaint seeking a declaratory judgment as to certain unfair labor practices and injunctive relief pending the declaration, since such matters were within the exclusive primary jurisdiction of the National Labor Relations Board. Its references to the interdictions of the Norris-LaGuardia Act are not necessary to the decision and in any event are couched in terms of secondary boycotts and similar labor disputes and bear no relation to a request for a decree compelling performance of a contract obligation to arbitrate grievances. The *Lee Way Motor Freight* case held that the Norris-LaGuardia Act prohibited an injunction sought by one common carrier against another where a labor dispute, originating between the plaintiff and certain unions, involving a strike and picketing, was projected into the relationship between defendant and its employees and could be avoided only by settlement of the conflict between plaintiff and the unions or by defendants terminating their traffic relations with the plaintiff. None of these cases purports to decide the question of the applicability of the Norris-LaGuardia Act to the circumstances of this case or the relief here sought and

none is in conflict with the decision of the Court below, or the decisions of the Third, Fifth and Sixth Circuits cited above on this question.

Petitioner's claim that the Court below misinterpreted this Court's decision in *Syres* v. *Oil Workers Union*, 350 U.S. 892 (1955) is equally unfounded. The *per curiam* opinion of this Court cites *Steele* v. *Louisville and Nashville Railroad*, 323 U.S. 192, *Tunstal* v. *Brotherhood*, 323 U.S. 210 and *Railroad Trainmen* v. *Howard*, 343 U.S. 768, cases which hold that the District Court has jurisdiction to issue injunctive relief notwithstanding the provisions of the Norris-LaGuardia Act, in circumstances similar in principle to those here involved. Since the *Syres* case involved employees subject to the Labor Management Relations Act, this Court's *per curiam* opinion indicates that the *Steele, Tunstall* and *Howard* cases do not rest upon any special terms or history of the Railway Labor Act. See *Virginian Railway Co.* v. *System Federation No. 40*, 300 U.S. 515 (1936); *Graham* v. *Brotherhood of Firemen*, 338 U.S. 232 (1949).

II. THERE IS NO IMPORTANT FEDERAL QUESTION REQUIRING DECISION BY THIS COURT WITH RESPECT TO THE NORRIS-LAGUARDIA ACT.

As noted, the decisions of the First, Third, Fifth and Sixth Circuit are in accord with respect to the non-applicability of the Norris-LaGuardia Act in the circumstances of this case and there is no decision of any Court of Appeals in conflict with these decisions. Moreover, this Court has held in a long and consistent line of cases that the Norris-LaGuardia Act does not deprive district courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act or deprive employees of equitable relief from illegal discriminatory representation or preclude man-

datory injunctions of the kind here sought. *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U.S. 515; *Graham* v. *Brotherhood of Firemen*, 338 U.S. 232; *Steele* v. *Louisville and Nashville Railroad*, 323 U.S. 192; *Tunstal* v. *Brotherhood of Locomotive Firemen and Enginemen*, 323 U.S. 210; *Railroad Trainmen* v. *Howard*, 343 U.S. 768. The *per curiam* opinion of this Court in the *Syres* case, *supra*, granting the petition for certiorari, reversing the judgment of the Court of Appeals in that case and remanding the case to the District Court is an indication that the question of the non-applicability of the Norris-LaGuardia Act to mandatory injunctions of the kind here sought does not warrant review by this Court.

III. The Decision Below Is Clearly Correct with Respect to the Norris-LaGuardia Act.

Petitioner does not seek to show that the decision of the Court below is incorrect except by citing earlier district court cases which are asserted to be in conflict with it, by claiming a misinterpretation of the *Syres* case, *supra*, and by alleging that the decision carves out a single term of the contract—that relating to arbitration—as exempt from arbitration. The latter point is not supported by the decision (See R. 39) and is in any event not an argument as to the incorrectness of the decision.

The decision is based on a careful and sound construction of the statute. For the legislative history, see the George Amendment 75 Cong. Rec. Pt. V 4772-4773. 72nd Cong. 1st Session Sen. Doc. No. 71. Conf. Rep. March 14, 1932; H. Rep. No. 793. Conf. Rep. March 14, 1932; H. Rep. No. 821, Conf. Rep. March 16, 1932; 75 Cong. Rec. pp. 5549-50, 6336-7; Witte "The Federal Anti-Injunction Act" 16 Minn. Law Review 638; and the Senate debate on the Railway Clerks case 75 Cong. Rec. Pt. 4, pp. 4936-9. Petitioner

nowhere controverts the Court's interpretation of the text of the statute as warranting the granting of the relief here sought (See R. 37) or the support which it finds in the legislative purpose and policy as declared in the Act to encourage the development of free collective bargaining (R. 39) or its interpretation of the injunction at which the Act was directed as the traditional labor injunction, (See H. Rep. No. 669, 72nd Cong., 1st session, p. 3, 8; *United States* v. *Hutcheson,* 312 U.S. 219) rather than an order to compel arbitration of an existing dispute under a collective bargaining agreement. (R. 36) Petitioner's arguments do not reach the basic issue and provide no ground for rejecting the decision of the Court below. It is manifestly correct.

IV. The Questions Raised by Petitioner with Respect to the Labor Management Relations Act and the Arbitration Act Relate to a Hypothetical and Abstract Case and Are Not Appropriate for Adjudication by This Court.

Petitioner's main reliance is on the asserted conflict between the decision of the Court below and the decisions of other courts of appeals and of this Court in *Bernhardt* v. *Polygraphic Co.,* 350 U.S. 198, with respect to the interpretation of the Arbitration Act, and a similar asserted conflict with the decisions in other courts of appeals and the decision of this Court in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.,* 348 U.S. 437, with respect to the interpretation of Section 301 of the Labor Management Relations Act (Petition 6-12). There is concededly an irreconcilable conflict of opinion among the courts of appeals on the question of the interpretation of the former, and many difficult and unresolved questions relating to the interpretation of the latter Act. But this case does not raise any such questions in the form of a case or controversy or in an appropriate manner for the ex-

ercise of the judicial power. The only actual case decided by the Court below relates to the non-applicability of the Norris-LaGuardia Act. Its discussion of the affirmative basis for obtaining the relief sought in the Labor Management Relations Act and the Arbitration Act is not the resolution of an actual controversy, but an abstract discussion of law. It is, in effect, guidance to the parties and to the District Court as to the law to be applied upon remand, when and if the parties amend their pleadings to show compliance with the requirements of the Arbitration Act and defenses afforded by it, when and if the District Court decides that the question of arbitrability is either for its determination or that of the arbitrator, and when and if either the District Court or the arbitrator decides that the grievances alleged are arbitrable under the provisions of the contract in suit. Moreover, the discussion of the Court below as to the applicable law proceeds on the assumption that the case now involves, and will continue to involve only federal jurisdiction and not jurisdiction based on diversity of citizenship.

But these conditions or assumptions as to the posture of the case on remand may never be met or may be met in a form which will bring the case for actual adjudication under entirely different circumstances. For example, although the Court below denied respondent's motion to amend its complaint to show diversity jurisdiction by showing, with supporting affidavit, not only that the local union was diverse in citizenship from petitioner, but that all its members were also diverse, (R. 57-58) it held in a later case, on precisely the same allegations, that there was both diversity and federal jurisdiction. *United Electrical Radio and Machine Workers of America (UE) Amalgamated Local 259* v. *Worthington Corporation*, C.A. 1, July 31, 1956. ("Thus on the record before us, taking into account the allegations as to citizenship of the individual plaintiffs and of the members of the plaintiff union, it seems that there is diversity

jurisdiction as to all parties and also federal jurisdiction under Section 301 of the Taft-Hartley Act as to plaintiff Union alone"). See *Thomas* v. *Board of Trustees of the Ohio State University* (1904) 195 U.S. 207; 29 U.S.C. Sec. 185(b). Even if this later decision does not indicate a retreat by the Court below from its position in the instant case, there is nothing to prevent respondent upon remand from further amending its complaint to bring a representative class suit, which would thereby raise the issue of diversity jurisdiction which the Court below upheld in the *Worthington* case, *supra*. In either event, if diversity jurisdiction is made to appear in the case, after remand, the decision as to the interpretation of federal law might well assume an entirely different aspect and render the Court's present discussion of the problem moot and abstract. See *Bernhardt* v. *Polygraphic Co.*, 350 U.S. 198; Mass. G.L. (Ter. Ed.) C. 150 § 11, C. 251 § 14 et seq.; *Magliozzi* v. *Handschumacher*, 327 Mass. 569; *Sanford* v. *Boston Edison*, 316 Mass. 631; *Post Publishing Co.* v. *Cort*, 134 N.E. 2d 431 Mass. (1956). Again, until petitioner and respondent amend their pleadings, to show compliance with and defenses under the Arbitration Act, it is not possible to know whether the issues raised, after remand, will be what the Court below assumes, or whether the case will go off on a tangent not foreseen. In any event, the decision of the Court below at this stage of the proceedings ought not to foreclose a review of the decision of the District Court as to the interpretation of federal law after the pleadings have been amended, upon remand, and the issues raised on an appeal. *Copra* v. *Suro*, C.A. 1, July 6, 1956. Furthermore, it is conceivable that the District Court or the arbitrator, as the case may be, on remand, may decide, as a matter of general contract law that under the contract in suit, there is no arbitrable issue, and such a decision would present a different issue, in the further litigation of the case, from those involving

the interpretation of federal law which petitioner presents in its petition.

Under any or all of these or other similar circumstances, the reasons which petitioner advances for granting the writ based on conflicts between the decision of the Court below and of other Courts of Appeals and of this Court with respect to the Arbitration Act and the Labor Management Relations Act involve hypothetical, unreal, moot, non-final and abstract questions and an interlocutory decision. As we have shown, these questions may never arise or may be litigated in a form, after remand, which will not even remotely resemble the questions to which the Court below addressed itself in its discussion of the affirmative basis in federal law upon which petitioner might "in the end" obtain the relief requested. Since this Court does not pass upon controversies or cases which are not actual nor sit to pass upon questions of law *in thesi* (See *Marye* v. *Parsons*, 114 U.S. 325, 330; *New Jersey* v. *Sargent*, 269 U.S. 328, 333), there is no warrant for granting the review petitioner seeks. See concurring opinion of Mr. Justice Brandeis in *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 346; *Peters* v. *Hobby*, 349 U.S. 331, 338.

Petitioner seeks to overcome this bar to the grant of its petition by claiming that "the Court's ruling as to the enforceability of the arbitration provision is 'fundamental to the further conduct of the case'. Cf. *United States* v. *General Motors Corp.*, 323 U.S. 373, 377 (1945); *Land* v. *Dollar*, 330 U.S. 731, 734 (1947)." (Petition p. 5, ftn. 2). Neither case is apposite. Both involved clear cut issues of law which would otherwise qualify as a basis for certiorari despite their interlocutory status. The present case is not merely in an interlocutory status, but involves so many variables, hypothetical questions and further possibilities beyond those discussed by the Court below that the Court's

ruling may have little or nothing to do with the further conduct of the case. The case is not ripe for adjudication.

Conclusion

For the foregoing reasons, it is respectfully submitted, this petition for a writ of certiorari should be denied.

Respectfully submitted,

ALLAN R. ROSENBERG
Counsel for Respondent.

Appendix A

Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. Secs. 101-115

Sec. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

Sec. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contractor agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

Sec. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuring, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patroling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

Sec. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

Sec. 6. No officer or member of any association or organization and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participating in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Sec. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

Sec. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order of injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

Sec. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization or employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or association of employers; or (3) between one or more employees or associations of employees and one

or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

Appendix B

MOTION TO AMEND COMPLAINT TO SHOW JURISDICTION.

Plaintiff Appellant moves to amend the Amended Complaint for Specific Performance of Contract to Arbitrate and for Damages herein by adding as the last sentence of paragraph one of Count I thereof: (R.13)

> "All of the employee members of, or employees represented by plaintiff Union are citizens of Massachusetts, Rhode Island or New Hampshire, none are citizens of New York",

and as the last sentence of paragraph three of Count I thereof: (R. 13)

> "This Count also has jurisdiction by virtue of Title 28, U.S.C. 1332(a)(1)."

By its attorney,
(s) ALLAN R. ROSENBERG

AFFIDAVIT IN SUPPORT OF APPELLANT'S MOTION TO AMEND COMPLAINT TO SHOW JURISDICTION.

Commonwealth of Massachusetts
Suffolk: ss

Charles R. Carr, being duly sworn, deposes and says:

My name is Charles R. Carr. I live at 16 Curve Street, Millis, Massachusetts. I am employed at the plant of appellee, General Electric Company, Telechron Department, at Ashland, Massachusetts, and have been so employed for the past seventeen years, except for four years' service in the armed forces. I am and have been for the past two years Business Agent of Local 205, United Electrical, Radio and Machine Workers of America (UE), appellant herein. I make this affidavit in support of appellant's motion to amend complaint to show jurisdiction.

Based on my own personal knowledge and an examination of the records of appellant Union, I depose and say that all the employees who are members of or represented by appellant Union are and were at the time of commencement of suit herein, citizens of the Commonwealth of Massachusetts, the State of Rhode Island, or the State of New Hampshire, and none of them were at the time of commencement of suit herein or are now, citizens of the State of New York.

(s) CHARLES R. CARR

Commonwealth of Massachusetts, Suffolk: ss

Subscribed and sworn to before me, this thirty-first day of January, 1956.

(s) C. BERTRAM CRAWFORD
Notary Public

My commission expires:
April 2, 1959

ORDER OF COURT.

April 25, 1956

It is ordered that motion of appellant to amend complaint to show jurisdiction be, and the same hereby is, denied.

By the Court:

(s) ROGER A. STINCHFIELD
Clerk.

CLERK'S CERTIFICATE.

I, Dana H. Gallup, Chief Deputy Clerk of the United States Court of Appeals for the First Circuit, and during the temporary absence of the Clerk, in charge of the affairs of said clerk's office of said Court and custodian of its files and records, certify that the foregoing two pages contain and are a true copy of (1) Motion to Amend Complaint to Show Jurisdiction with Affidavit in support thereof filed January 31, 1956, and (2) Order of April 25, 1956, denying said motion in the cause in said Court numbered and entitled 4980, Local 205, United Electrical, Radio and Machine Workers of America (UE), plaintiff, appellant, versus General Electric Company, (Telechron Department, Ashland, Massachusetts), defendant, appellee.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Court of Appeals for the First Circuit, at Boston, Massachusetts, in said First Circuit, this second day of August, A.D. 1956.

[SEAL]

(s) DANA H. GALLUP
Chief Deputy Clerk.